In the Supreme Court of the United States

OCTOBER TERM, 1978

Nos. 78-606, 78-607

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, ET AL.,
Respondents,

GENERAL TELEPHONE COMPANY OF CALIFORNIA,
Petitioner,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, ET AL.,
Respondents.

OBJECTION TO MOTIONS FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

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The City and County of San Francisco, the City of Los Angeles, and the City of San Diego (Cities) are parties respondent in Nos. 78-606 and 78-607.

The Cities to date have received requests to file a brief *amicus curiae* from the Edison Electric Institute (EEI), The Southern Company (Southern), the Sierra Pacific Power Company (Sierra Pacific), Dallas Power & Light Company, Texas Electric Service Company and Texas Power & Light Company.[1] The Cities denied consent to these entities and will deny consent to any

1. On November 6, 1978 the Cities received a Motion and Brief in 78-607 of the Communication Workers of America (CWA). Consent was never requested by CWA. This motion should be denied due to its lack of timeliness, failure to show a substantial interest and failure to add any material beyond petitioners allegations. On November 7, 1978 CWA submitted a similar document in 78-606. On November 7, 1978 Kansas City Power and Light requested consent.

other entity making a request. In this filing, the Cities will explain, pursuant to Rule 42(3), the basis for our denial of consent and request the Court to Deny the Motions to file a Brief *amicus curiae* of EEI and Southern Company.

As of November 7, 1978, the City had not received copies of a Motion or Brief from Sierra Pacific, Dallas Power & Light Company, Texas Electric Service Company and Texas Power & Light Company. If these entities or any other entities file motions and briefs they should be rejected on grounds that they were not submitted "in a reasonable time prior to the consideration . . . of the petition" (Rule 42(1)), in addition to the reasons to be stated relevant to EEI and the Southern Company. We do not object to the timeliness of the EEI and Southern motions. These motions should be rejected on the following bases.

Movants Lack Requisite Interest in Proceedings.

The petitioners in 78-606 and 78-607 seek Supreme Court review of a narrow California intrastate rate refund and reduction order. The order is based on the California Public Utilities Commission's (PUC) and the California Supreme Court's findings of managerial imprudence and obstinancy in selection of income tax alternatives. *City and County of San Francisco* v. *Public Utilities Commission* 6 Cal.3d 119, 127-130 (1971); *City of Los Angeles* v. *Public Utilities Commission* 15 Cal.3d 680, 689, fn. 12 (1975), PUC Decision No. 87838, Finding 1, Petitioners' Appendix B, p. 45A.

EEI does not allege its members are equally imprudent or obstinate. Even assuming that the facts in the instant cases are applicable to EEI members, the opinions subject of the petitions are intrastate rate making orders. The views of the PUC, as affirmed by the California Supreme Court, are not binding on any other state or, federal regulatory agency. The methodology adopted in the instant case based on the imprudence of Pacific and General is not even binding in future cases involving petitioners. *City of Los Angeles* v. *Public Utilities Commission* 15 Cal.3d 680, 704, fn. 42. (1975) In these circumstances EEI has not shown the requisite interest to justify the filing of an amicus curiae brief.[2]

Southern implicitly recognizes it has no specific interest in the issues raised by the Petitions. Southern is not concerned with California rate standards (see Southern Brief p. 21) or even in an advisory tax opinion based on the facts relevant to Pacific and General. Southern is concerned about "public utilities which both before and after the enactment of the Tax Reform Act of 1969 used accelerated depreciation methods for federal income tax purposes and normalized the deferred taxes for ratemaking purposes; . . . "and to public utilities whose state regulatory commissions use ratemaking methods different from those employed by the California Commission." (Southern Motion pp. 4-5.) These circumstances are not applicable to the facts in the instant action.

EEI and Southern lack an interest in the factual and legal issues of the instant petitions.

Movants Briefs Add No Relevant Contribution to the Disposition of the Petitions

The EEI Brief virtually repeats the arguments raised by Pacific and paraphrases them. EEI has failed

2. EEI is purportedly presenting the views of its member electric utility companies. We believe that Southern, Sierra Pacific, Dallas Power & Light, Texas Electric Service and Texas Power & Light are EEI members. If these entities have a specific interest it could be represented by filing a brief of their own or through EEI. They should not be represented by two briefs. (EEI and the individual company.)

to "set forth facts or questions of law that have not been or reasons for believing they will not adequately be presented by the parties." (Rule 42(3)

The Southern brief presents no analysis of the facts or law relevant to the petitions. Its only legal citation is Alabama intrastate rate criteria (Southern Brief at 15).

The EEI and Southern briefs merely clog the record in the instant proceedings. There is no allegation that Pacific and/or General are not adequately represented by counsel or able to present issues adequately to the Court.

CONCLUSION

All motions to file a brief *amicus curiae* should be denied. Under Court Rule 42(1) "Such motions are not favored." The instant motions are particularly defective due to lack of movants' interest in the proceedings and lack of relevant substantive comment in the briefs.

Respectfully submitted,

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